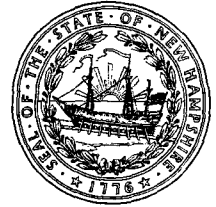




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Robert S. Phillips
P.O. Box 590
Weare, NH 03281

ADMINISTRATIVE ORDER
No. WD 05-032

December 20, 2005

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Robert S. Phillips pursuant to RSA 485-A:4 and RSA 485-A:42. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. Robert S. Phillips is an individual having a mailing address of P.O. Box 590, Weare, New Hampshire 03281.

C. STATEMENTS OF FACTS AND LAW

1. RSA 485-A:4, XVI-a authorizes DES to regulate the removal, transportation, and disposal of septage through administration of a permit system. Pursuant to RSA 485-A:6, X-a, the Commissioner of DES has adopted NH Administrative Rules Env-Ws 1600 ("the Septage Rules") to implement this program.
2. Robert S. Phillips is the operator and property owner of the septage facility located at 410 South Stark Highway in Weare, New Hampshire ("the Facility"), operating under the authority of septage facility permit number SEF-01-004 ("the Permit") issued October 31, 2001, which replaced an expired groundwater discharge permit issued in February 1996.
3. As permitted, the Facility operated as an advanced treatment system comprised of primary settling, solar-aquatic secondary treatment, and created wetland tertiary treatment, with final discharge of effluent to groundwater through rapid infiltration trenches. The management plan of the Facility lists a limit for Biological Oxygen Demand ("BOD"), Total Suspended Solids ("TSS") and nitrate in the effluent of 30, 30 and 10 milligrams per liter (mg/l), respectively.
4. On January 10, 2003, DES issued a letter to Mr. Phillips outlining concerns that groundwater in several of the Facilities groundwater monitoring wells had exceeded the 10 mg/l Ambient Groundwater Quality Standard ("AGQS"), and stating that a Corrective Action Plan ("CAP") will need to be submitted for approval if additional groundwater monitoring data indicates continued violation of AGQS.

5. On May 16, 2003, DES issued a letter requesting a CAP be submitted for approval by July 31, 2003. The letter also requested submittal of a Groundwater Monitoring Plan ("GMP") and the location of a new groundwater monitoring well to fulfill Conditions 3 and 7 of the Permit.
6. On June 18, 2003, Mr. Phillips submitted a CAP but no GMP.
7. On August 1, 2003, DES issued a letter approving the CAP and the location for 2 new groundwater monitoring wells that fulfill Condition 3 of the Permit. However, DES stated that a GMP is still required to fulfill Condition 7 of the Permit.
8. On October 8, 2003, Mr. Phillips submitted a letter refuting the need for a GMP.
9. On October 27, 2003, DES and Mr. Phillips held a meeting to discuss the GMP situation.
10. On December 10, 2003, Mr. Phillips submitted a GMP.
11. On December 22, 2003, DES issued a letter stating the submitted GMP was incomplete. DES requested the GMP be revised and resubmitted by February 16, 2004.
12. On March 1, 2004, Mr. Phillips submitted a revised but still incomplete GMP.
13. On March 11, 2004, DES issued a letter instructing Mr. Phillips to institute a GMP as specified in the same letter.
14. On June 9, 2004, Mr. Phillips submitted incomplete GMP data, but the submitted groundwater monitoring well data indicated all wells exceeded AGQS for nitrate.
15. On August 13, 2004, DES issued a letter requesting missing GMP data from April, May, June and July of 2004 be submitted by August 27, 2004. In addition Mr. Phillips was reminded that the Rule required monthly sampling of all monitoring wells due to the violation of AGQS.
16. On April 13, 2005, DES issued a letter reiterating the requirements of its August 13, 2004 letter, and requesting five additional sets of data missing since that letter. All information was to be submitted by April 29, 2005.
17. On August 9, 2005, DES performed an inspection of the Facility. The inspection revealed that Mr. Phillips had modified the design and operation of the facility well beyond what was approved in the CAP.
18. On August 25, 2005, DES issued Letter of Deficiency WD WWEB/R 05-002 ("the LOD") to Mr. Phillips. The LOD required Mr. Phillips to submit all missing GMP data by September 9, 2005, and submit a permit modification application to cover the modifications at the Facility by September 23, 2005.
19. On September 8, 2005, in response to the LOD Mr. Phillips only submitted incomplete GMP data.
20. On September 14, 2005, DES issued a letter requesting the missing GMP data, or a statement why the data is not available, and the permit modification application be submitted by September 28, 2005, and that a new CAP to remediate ongoing AGQS violations be submitted by October 10, 2005.

21. On October 28, 2005, Mr. Phillips submitted still incomplete GMP data, and an incomplete permit modification application.
22. On November 2, 2005, DES sent e-mail to Mr. Phillips requesting the missing GMP data, or a statement why the data is not available, and missing data for the permit modification application by November 14, 2005.
23. On November 7, 2005, DES sent e-mail to Mr. Phillips requesting clarification as to why data for the South monitoring well was not included in the information supplied on October 28, 2005.
24. On November 8, 2005, Mr. Phillips replied that the well "has been dry or the most I can get out of it is mud".
25. On November 9, 2005, DES replied that since the South well was no longer a functioning monitoring well, a new South well will have to be installed to comply with the GMP.

D. DETERMINATION OF VIOLATIONS

1. Robert S. Phillips has violated Condition 7 of the Permit by not submitting GMP data to DES.
2. Robert S. Phillips has violated Condition 3 of the Permit by not installing new groundwater monitoring wells.
3. Robert S. Phillips has violated Condition 4 of the Permit by continuing land disposal practices at the Facility while not complying with Condition 3.
4. Robert S. Phillips has violated Env-Ws 1604.08(b) (*or 1603.12(b) as adopted 10/27/05*) by not applying for and receiving approval of a modification to the Facility.
5. Robert S. Phillips has violated Env-Ws 1609.04(c) by not submitting groundwater monitoring data to DES.

E. ORDER

Based on the above findings, DES hereby orders Robert S. Phillips as follows:

1. By **January 31, 2006** Mr. Phillips shall provide all data and information required to comply with Letter of Deficiency WD WWEB/R 05-002. If any required historical data is not available, Mr. Phillips shall indicate in writing why the data is not available, and provide written procedures that will be instituted to assure future GMP data is properly managed and reported.
2. By **April 28, 2006** Mr. Phillips shall install all new groundwater monitoring wells required to properly monitor groundwater at the Facility. These shall include, but not necessarily be limited to, the new Northwest well and a replacement for the failed South well.
3. If E.1 or E.2 are not complied with, Mr. Phillips shall close the Facility in accordance with Condition 2.(b) of the Permit, and the New Hampshire Department Of Environmental Services Guidance For The Closure Of Septage Lagoons. Closure shall be completed, with the exception of ongoing verification groundwater monitoring, by **June 30, 2007**.

4. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Alexis Rastorguyeff, P.E.
DES Water Division
Residuals Management Section
P.O. Box 95
Concord, NH 03302-0095
e-mail: arastorguyeff@des.state.nh.us

Fax: (603) 271-4128

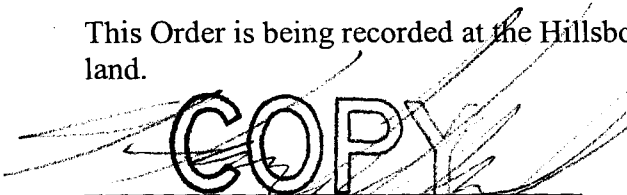
F. APPEAL


Any person aggrieved by this Order may appeal the Order to the Water Council by filing an appeal that meets the requirements specified in Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Robert S. Phillips of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 485-A:43 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Robert S. Phillips remains obligated to comply with all applicable requirements of the Permit. DES will continue to monitor Mr. Phillips' compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded at the Hillsborough County Registry of Deeds so as to run with the land.


Harry T. Stewart, P.E., Director
Water Division


Michael P. Nolin, Commissioner
Department of Environmental Services

Certified Mail/RRR: 7099 3400 0018 1294 3905

cc: Gretchen Hamel, DES Legal Unit
Public Information Officer, DES PIP Office
Mitch Locker, P.G., DES Water Supply Engineering Bureau
Robert Christensen, Weare Town Administrator
Pat Hannon, RMS